



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/171373

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on February 11, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency met its burden to show that it correctly discontinued petitioner's FS due to income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On December 28, 2015 the agency issued a notice of decision to petitioner stating that effective February 1, 2016 her household of 3 was not enrolled in FS because she was over the income limit. Ex. 4.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned income. 7 C.F.R. § 273.9(b). From the gross household income, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6 are allowed: (1) standard deduction; (2) earned income deduction; (3) medical expense deduction; (4) dependent care deduction for child care expenses; and (5) shelter expenses deduction. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wi.gov/fsh/>.

In this case, petitioner's earned income was prospectively budgeted, apparently based on the income information the agency received from the Work Number. The agency averaged three months of income from May-July 2015 to determine her income for February. What was not explained was why those three months of income were used or why the notice of decision provided another income figure for petitioner than the budget showed which used the average (see Ex. 4 vs. Ex. 3). Further complicating the matter is that petitioner testified at hearing that there were more people in her home than the agency was budgeting, although it appeared that by the date of hearing petitioner had only reported 4 people in the household. Additionally, petitioner testified that the income the agency was using included overtime and was not accurate for the ongoing months. She testified she had recently updated her income with the agency for child care benefits.

In a hearing such as this for FS, it is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In other words, the agency must show why it did what it did. I cannot tell from the evidence that the agency used the best-verified information available when determining the best estimate of income. *FoodShare Wisconsin Handbook*, §4.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. I therefore find that the agency has not met its burden to show how it determined that her income was over the FS limit. As such I am remanding the matter for redetermination of benefits. Because verification of income and household composition may be needed to redetermine petitioner's FS effective February 1, 2016, I am adding days so that the agency may accomplish that verification, if it is needed. Petitioner is reminded to timely comply with any verification request so that the redetermination may occur.

CONCLUSIONS OF LAW

The agency has not met its burden to show that it correctly denied petitioner's FS due to income effective February 1, 2016.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency to (1) redetermine FS effective February 1, 2016 and ongoing, ensuring that it is budgeting petitioner's income and all household members correctly on the case, (2) issue any FS accordingly, to the extent not already issued, and (3) issue a notice of decision regarding same. Because the agency may require verification of these items, I am allowing 20 days for that to be accomplished. These actions shall be taken within 20 days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of March, 2016

\sKelly Cochran
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 9, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability